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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,591	12/07/2001	Antonino D'Africa	70398	8366
7590 12/03/2004 MCGLEW AND TUTTLE SCARBOROUGH STATION SCARBOROUGH, NY 10510-0827			EXAMINER MAIORINO, ROZ	
			ART UNIT 3763	PAPER NUMBER 16

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

restart time (3)

On April 4, 2003, a Notice of Abandonment was mailed to Mr. Paduano indicating that the application had become abandoned for failure to file a reply to the Office action of October 3, 2002.

On June 10, 2003, Mr. Paduano again requested copies of papers filed/received of record in the instant application.

On July 12, 2003, a letter was mailed to Mr. Paduano confirming abandonment of the instant application and included advice on how to revive the instant application.

On July 30, 2003 the instant petition was filed by Mr. John James McGlew of McGlew and Tuttle requesting that the abandonment be withdrawn. The request asserts that McGlew and Tuttle never received the Office action in question as it was mailed to an incorrect address as a result of the Office improperly acting on a defective revocation of power of attorney/change of correspondence address. The request includes declarations signed by the other two inventors noting that the inventors as a whole had not requested that there be a change in representation or correspondence address.

On September 26, 2003, Mr. Paduano filed another alluding to conflicts existing between him and the other two inventors and again requests copies of all papers.

DISCUSSION

The declaration submitted at the time of filing of the instant application named a number of individuals, all registered practitioners associated with the law firm of McGlew and Tuttle, P.C., as applicants' representatives. The declaration also indicated the correspondence address as that of the law firm. Each one of the three inventors signed the declaration. There being no irregularities with the appointment of applicants' representative and/or the correspondence address, the Office accepted the appointment of applicants' representatives and correspondence address. See 37 CFR 1.34.

To change a correspondence address, 37 CFR 1.33(a)(2) indicates that it must be done in accordance with the guidelines set forth in 37 CFR 1.33(b), except for paragraph (b)(2). 37 CFR 1.33(b) indicates that the change in correspondence address must be signed by (1) a registered patent attorney or agent of record appointed in compliance with 37 CFR 1.34(b), (2) an assignee as provided for under 37 CFR 3.71(b), or (3) **all of the applicants for patent**, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with 37 CFR 3.71 (emphasis added).

Papers revoking a power of attorney in an application requires signature by all the applicants or owners of the application. Section 402.10 of the MPEP states that papers revoking a power of attorney in an application will not be accepted by the Office when signed by **less than all of the applicants** or owners of the application unless they are accompanied by a petition and fee under 37 CFR 1.182.

The Office records show that this application is not currently assigned. Thus, all applicants must sign any revocation/appointment of power of attorney and/or change in correspondence address. Accordingly, as the paper filed March 28, 2002 was signed by only one of the three inventors, the Office erred in

accepting and processing said paper as a revocation of power of attorney/change of correspondence address.


In view of the above, as the Office action of October 3, 2002 was mailed to an incorrect address, the holding of abandonment for failure to respond to said Office action is hereby withdrawn. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner to rescind the change in correspondence address and to correct the records to reflect the information provided in the declaration submitted at the time of filing, and to have the Office action of October 3, 2002 remailed, which Office action will set a new period for reply.

In view of the circumstances of this particular case, a courtesy copy of this decision is being mailed to applicant Guido Paduano. However, it is noted that 37 CFR 1.33(a) clearly states that the Office will not engage in double correspondence with an applicant and a registered attorney or agent. Thus, all future papers will be mailed only to the duly appointed representative.

Summary: Holding of Abandonment Withdrawn.

Change of Correspondence Address Rescinded.

Office Action of October 3, 2003 to be Rемаiled with New Period for Reply.



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ak/06/30/04